IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.19219 of 2003
VIJAY SINGH
Versus
STATE OF BIHAR & ANR

For the petitioner: Mr. Mrigank Mauli
For the State : Mr. APP
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7 18.7.2008 Heard learned counsel for the petitioner and learned counsel for the State. None appears on behalf of opposite party no.2.

This application has been filed for quashing the order dated 31.5.2003 passed by Sri B.B.Singh, Judicial Magistrate, 1st Class, Patna in Complaint case no. 2543© of 2002 whereby and whereunder he has taken cognizance against the petitioner under sections 420 and 120B of the Indian Penal Code.

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Shortly stated the case of the complainant/opposite party no.2 as put in the petition of complaint is that the petitioner accused approached and requested the complainant for supply of fertilizer against the payment by cheque and accordingly the complainant supplied fertilizer to him vide so many invoices since 1999-2000 till 2.9.2000. In course of said transaction the outstanding balance against the accused accrued to the tune of Rs. 1,49,708.43 paise till 30.9.2002. Inspite of several requests and reminders the accused did not make payment of the aforesaid outstanding balance to the complainant. Thereafter legal notice was issued calling upon the accused petitioner to make payment or return the fertilizer against

which the aforesaid amount was outstanding but no step was taken on behalf of the petitioner. Accordingly the complaint was filed before the Chief Judicial Magistrate, Patna. It appears that during inquiry witnesses were examined and the learned Magistrate after being satisfied that there was sufficient material to proceed further against the petitioner accused under sections 420 and 120B IPC issued summons against him. The petitioner against the said order has preferred the present application for quashing before this Court.

Counsel appearing on behalf of the petitioner has submitted that the complainant during his examination on solemn affirmation on being asked by the court stated that the business with the petitioner was continuing since ten to fifteen years. He further submitted that to establish allegations the complainant had filed five invoices which are dated 29.8.1998, 20.8.1998, 8.11.1998, 1.1.1999 and 9.1.1999 all valued Rs. 5,18,516.06 paise. In this connection he referred to annexure-3 series to the application. Learned counsel submitted that the business transaction between the parties was going on since last 15 years. If some payment was not made by accused petitioner then on the basis of allegation no criminal offence is made out. He submitted that this is a case of civil nature. He also submitted that there is no whisper in the complaint that at the very inception of transaction between the parties there was any intention to cheat the complainant.

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In the complaint petition it has only been alleged that the complainant supplied fertilizer to the petitioner accused but he failed

to pay the price thereof. There is nothing in the complaint to show that at the very inception of transaction between the parties there was any intention to cheat. On the other hand, from annexure-3 series it appears that the business transaction was going on between the parties since the year 1998. From perusal of invoice it appears that it is a case of part payment. Thus on the basis of allegation, to me it appears that it is a case of purely civil liability and no criminal offence is made out against the petitioner.

In the aforesaid facts and circumstances, the continuation of the present criminal prosecution would amount to an abuse of the process of the court. This application is accordingly, allowed and the order of cognizance dated 31.5.2003 as against the petitioner is hereby quashed.

However, the parties should take steps for settlement of the dispute in accordance with law.

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(M.Saran,J)

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